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Supreme Court, U.S.
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No. 01-

IN THE

Supreme Court of the United States

ANDREW G. MALONEY,

Petitioner,

v.

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT OF THE STATE OF NEW YORK,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

APPENDIX

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62 pp

DECISION AND ORDER OF THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT DATED DECEMBER 27, 1999

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

GUY JAMES MANGANO, P.J.
LAWRENCE J. BRACKEN
SONDRA MILLER
CORNELIUS J. O'BRIEN
GABRIEL M. KRAUSMAN, JJ.

1999-10864

In the Matter of Andrew G. Maloney, an attorney and counselor-at-law.

Grievance Committee for the Ninth Judicial District,

petitioner;

Andrew G. Maloney,

respondent.

DECISION & ORDER ON MOTION

Motion by the Grievance Committee for the Ninth Judicial District for an order (1) suspending the respondent from the practice of law for an indefinite period and until further order of this court, based upon his substantial

admissions under oath that he has committed acts of professional misconduct and other uncontroverted evidence of professional misconduct, (2) authorizing the institution and prosecution of a disciplinary proceeding, (3) directing the respondent to answer the petition, dated November 18, 1999, within 10 days after service upon him of this order, and (4) referring the matter to a Special Referee to hear and report. The respondent was admitted to the practice of law at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on February 8, 1989, under the name Andrew Gerald Eardley Maloney.

Upon the papers submitted in support of the motion and the papers submitted in opposition thereto, it is

ORDERED that the branch of the motion which was to immediately suspend the respondent from the practice of law is denied; and it is further,

ORDERED that the branches of the motion which were to authorize the institution and prosecution of a disciplinary proceeding, direct the respondent to answer the petition, and refer the matter to a Special Referee are granted; and it is further,

ORDERED that the Grievance Committee for the Ninth Judicial District is hereby authorized to institute and prosecute a disciplinary proceeding in this court, as petitioner, against Andrew G. Maloney, as respondent, based upon the acts of professional misconduct set forth in the petition; and it is further,

ORDERED that Gary L. Casella, Chief Counsel to the Grievance Committee for the Ninth Judicial District, 399 Knollwood Road, White Plains, New York 10603, is hereby appointed as attorney for the petitioner in such proceeding; and it is further,

ORDERED that the respondent shall serve an answer to the petition, dated November 18, 1999, upon the petitioner and the Special Referee and shall file a copy of the same with this court within 10 days after his receipt of this order; and it is further,

ORDERED that the issues raised by the petition and any answer thereto are referred to the Honorable Jerome M. Becker, a former Judge of the Criminal and Family Courts, 641 Lexington Avenue, 4th Fl., New York, N.Y. 10022, as Special Referee to hear and report, together with his findings on the issues.

MANGANO, P.J., BRACKEN, S. MILLER, O'BRIEN, and KRAUSMAN, JJ., concur.

s/ JAMES EDWARD PELZER
James Edward Pelzer
Clerk

OPINION AND ORDER OF THE APPELLATE DIVISION DATED APRIL 16, 2001

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

LAWRENCE J. BRACKEN, P.J.
CORNELIUS J. O'BRIEN
FRED T. SANTUCCI
MYRIAM J. ALTMAN
GABRIEL M. KRAUSMAN, JJ.

1999-10864

In the Matter of Andrew G. Maloney, an attorney and counselor-at-law.

Grievance Committee for the Ninth Judicial District,

petitioner;

Andrew G. Maloney,

respondent.

OPINION & ORDER

DISCIPLINARY proceeding instituted by the Grievance Committee for the Ninth Judicial District. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on February 8, 1989, under the name Andrew Gerald Eardley

Maloney. By decision and order of this court dated December 27, 1999, the matter was referred to the Honorable Jerome M. Becker, as Special Referee to hear and report.

Gary L. Casella, White Plains, N.Y. (Gloria A. Bunze of counsel), for petitioner.

Jerome Karp, P.C., Brooklyn, New York, for respondent.

The respondent was served with a petition containing 75 charges of professional misconduct. Charges 43, 71, 74, and 75 were withdrawn during the course of the disciplinary proceeding, and Charges 7, 13, 14, 17, 18, and 20 through 23 were amended before the hearing. In his answer, the respondent admitted most of the factual allegations of the petition, but denied that he was guilty of any professional misconduct. At the hearing, the Grievance Committee's case consisted of 48 exhibits and the testimony of two witnesses. The respondent called three character witnesses and testified on his own behalf. In addition, he introduced one exhibit into evidence and submitted 12 character affidavits. At the conclusion of the hearing, the Special Referee sustained all of the remaining charges. The Grievance Committee now moves to confirm the Special Referee's report. The respondent cross moves to confirm, in part, and disaffirm, in part, the Special Referee's report.

Charges 2, 19, 32, 34, 37, 40, and 50 allege that the respondent breached his fiduciary duty by making withdrawals from an escrow account to cash and not to a named payee, in violation of Code of Professional Responsibility DR 9-102(e) (22 NYCRR 1200.46[e]).

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Charge 4 alleges that the respondent entered into an improper business relationship with a client, in violation of Code of Professional Responsibility DR 5-104(a) (22 NYCRR 1200.23[a]), and/or engaged in conduct adversely reflecting on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]).

Charge 7 alleges that the respondent engaged in conduct adversely reflecting on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]), by breaching his agreement to repay, upon request, a loan from a client's escrow funds.

Charge 9 alleges that the respondent breached his fiduciary duty by failing to maintain and/or produce required bookkeeping records, in violation of Code of Professional Responsibility DR 9-102(d)(1), (2), and (9) (22 NYCRR 1200.46[d][1], [2], and [9]).

Charges 12, 39, 42, 52, 65, and 66 allege that the respondent failed to maintain a duly-constituted escrow account by commingling an earned fee or personal funds with the funds of clients and/or others, in violation of Code of Professional Responsibility DR 9-102(a) (22 NYCRR 1200.46[a]).

Charges 13, 17, 31, 36, 38, 46, 47, 48, 49, 51, 53, 54, 56, 57, 58, 59, 64, and 68 allege that the respondent breached his fiduciary duty by misappropriating client funds with which he was entrusted, in violation of Code of Professional Responsibility DR 9-102(a) (22 NYCRR 1200.46[a]), and/or

engaged in conduct adversely reflecting on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]).

Charges 8, 10, 16, and 25 through 30 allege that the respondent breached his fiduciary duty by disbursing an escrow check when he did not have funds on deposit to cover the check or before the corresponding deposit cleared, in violation of Code of Professional Responsibility DR 9-102(a) (22 NYCRR 1200.46[a]), and/or engaged in conduct adversely reflecting on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]).

Charges 41, 44, and 62 allege that the respondent breached his fiduciary duty by disbursing more funds than he had on deposit for a particular client, adversely reflecting on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3 [a][7]).

Charge 55 alleged that the respondent breached his fiduciary duty by transferring funds from one escrow account to another in order to cover a negative balance in the receiving account which adversely reflects on his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]).

Based on the evidence adduced at the hearing, including the respondent's admissions, we find that all of the foregoing charges are sustained. We also find that Charges 3, 24, 45, 63, 67, and 72 are sustained only insofar as they alleged that the respondent engaged in conduct adversely reflecting on

his fitness as a lawyer, in violation of Code of Professional Responsibility DR 1-102(a) (7) (22 NYCRR 1200.3 [a][7]). The remaining charges are not sustained.

In determining the appropriate measure of discipline to impose, the respondent asks the court to consider, *inter alia*, that the Special Referee made no finding of venality, characterized the respondent's misconduct as "mistakes", and was impressed with the respondent's Bar and community service activities (which are numerous). The respondent also asks the court to consider that his clients were not harmed, that he was contrite, and that he expressed remorse for his misconduct.

The respondent's prior disciplinary history consists of a letter of admonition from the Westchester County Bar Association.

The respondent is guilty of serious professional misconduct that warrants his disbarment.

BRACKEN, P.J., O'BRIEN, SANTUCCI, ALTMAN and KRAUSMAN, JJ., concur.

ORDERED that the Grievance Committee's motion to confirm and the respondent's cross motion to confirm, in part, and disaffirm, in part, the Special Referee's Report are determined as follows: Charges 3, 24, 45, 63, 67, and 72 are sustained only insofar as they allege violations of Code of Professional Responsibility DR 1-102(a)(7) (22 NYCRR 1200.3[a][7]); Charges 1, 5, 6, 11, 14, 15, 18, 20 through 23, 33, 35, 60, 61, 69, 70, and 73 are not sustained; and the remaining charges are sustained; and it is further,

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ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent, Andrew G. Maloney, is disbarred and his name is stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent shall promptly comply with this court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see*, 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, Andrew G. Maloney is commanded to desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law.

ENTER:
JAMES EDWARD PELZER
James Edward Pelzer
Clerk

DECISION AND ORDER ON MOTION OF THE APPELLATE DIVISION DATED AUGUST 7, 2001

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND JUDICIAL DEPARTMENT

LAWRENCE J. BRACKEN, P.J.
CORNELIUS J. O'BRIEN
DAVID S. RITTER
FRED T. SANTUCCI
GABRIEL M. KRAUSMAN, JJ.

1999-10864

In the Matter of Andrew G. Maloney, a disbarred attorney.

Grievance Committee for the Ninth Judicial District,

petitioner;

Andrew G. Maloney,

respondent.

DECISION & ORDER ON MOTION

Motion by the respondent for leave to reargue an opinion and order of this court dated April 16, 2001, which disbarred him, and, upon reargument, to modify the discipline imposed.

Upon the papers filed in support of the motion and the papers filed in opposition thereto, it is

ORDERED that the motion is denied.

BRACKEN, P.J., O'BRIEN, RITTER, SANTUCCI and KRAUSMAN, JJ., concur.

ENTER:

JAMES EDWARD PELZER
James Edward Pelzer
Clerk

ORDER OF THE NEW YORK STATE COURT OF APPEALS DATED OCTOBER 23, 2001

STATE OF NEW YORK,
COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-third day of October 2001

PRESENT, HON. JUDITH S. KAYE, *Chief Judge, presiding.*

2-24 Mo. No. 1199

In the Matter of Andrew G. Maloney, an attorney and counselor-at-law.

Grievance Committee for the Ninth Judicial District,

Respondent;

Andrew G. Maloney,

Appellant.

A motion for leave to appeal to the Court of Appeals in the above cause having heretofore been made upon the part of the appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

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ORDERED, that the said motion be and the same hereby is dismissed as untimely (*see*, CPLR 5513[b]). Judge Smith took no part.

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

ORDER OF THE NEW YORK STATE COURT OF APPEALS DATED JANUARY 15, 2002

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the fifteenth day of January 2002

STATE OF NEW YORK
COURT OF APPEALS

PRESENT, HON. JUDITH S. KAYE, *Chief Judge*, presiding.

2-24 Mo. No. 1364

In the Matter of Andrew G. Maloney, an attorney and counselor-at-law.

Grievance Committee for the Ninth Judicial District,

Respondent;

Andrew G. Maloney,

Appellant.

A motion for reargument to the Court of Appeals in the above cause having been heretofore made upon the part of appellant herein and papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion for reargument of so much of appellant's prior motion as sought leave to appeal

from an Appellate Division order denying reconsideration, which was dismissed as untimely by this Court on October 23, 2001, be and the same hereby granted and, upon reargument, that part of the motion for leave to appeal is dismissed upon the ground that the order sought to be appealed from does not finally determine the proceeding within the meaning of the Constitution.

Judge Smith took no part.

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

ORDER OF THE NEW YORK STATE COURT OF APPEALS DATED MARCH 26, 2002

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the twenty-sixth day of March 2002

STATE OF NEW YORK,
COURT OF APPEALS

PRESENT, HON. JUDITH S. KAYE, *Chief Judge*, presiding.

2-24 Mo. No. 260

In the Matter of Andrew G. Maloney,
a Disbarred Attorney.

Grievance Committee for the Ninth Judicial District,

Respondent;

Andrew G. Maloney,

Appellant.

A motion for reargument of motion for leave to appeal to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein, papers having been submitted thereon and due deliberation having been thereupon had, it is

ORDERED, that the said motion be and the same hereby is denied.

Judge Smith took no part.

s/ Stuart M. Cohen
Stuart M. Cohen
Clerk of the Court

NOTICE OF MOTION FOR RECONSIDERATION OF SANCTION IMPOSED DATED MAY 16, 2001

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION : SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

NOTICE OF MOTION FOR RECONSIDERATION OF SANCTION IMPOSED

Sirs:

PLEASE TAKE NOTICE, that upon the annexed Affidavit of Andrew G. Maloney, dated May 16, 2001, the exhibits annexed hereto, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court at a Motion Term therefore, at the Courthouse located

at 45 Monroe Place, Brooklyn, New York, on the 1st day of June 2001, at 10:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order (1) granting leave to reargue the Decision and Order of this Court dated April 16, 2001; (2) and in the event such leave is granted, modifying the discipline imposed upon the respondent in the Decision and Order of this Court dated April 16, 2001; (3) staying respondent's disbarment from the practice of law pending the determination of respondent's application and (4) for such other and further relief as may be just and proper.

Dated: Brooklyn, New York
May 16, 2001

AFFIDAVIT OF ANDREW G. MALONEY IN SUPPORT OF MOTION FOR RECONSIDERATION OF SANCTION IMPOSED

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

TO: HON. LAWRENCE J. BRACKEN,
PRESIDING JUSTICE
HON. CORNELIUS J. O'BRIEN
HON. FRED T. SANTUCCI
HON. MYRIAM J. ALTMAN
HON. GABRIEL M. KRAUSMAN, JJ

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AFFIDAVIT OF ANDREW G. MALONEY IN SUPPORT OF MOTION FOR RECONSIDERATION OF SANCTION IMPOSED

I, ANDREW G. MALONEY, being duly sworn, hereby state under the penalties of perjury:

Respondent, ANDREW G. MALONEY, hereby respectfully submits this Affidavit in Support of Motion for Reconsideration of the Sanction of Disbarment issued by the Court herein in its order dated April 16, 2001, court resulting from charges brought the Grievance Committee for the Ninth Judicial District. It should be noted that the charges brought emanate from a sua sponte investigation commenced in 1996 by the Disciplinary Committee for the First Judicial Department. In 1998 the pending matter was transferred to the Ninth Judicial District who brought the instant action in November 1999.

On or about November 1999, Respondent was served with a motion for interim suspension based upon several improprieties which were the subject of a sua sponte investigation. By Order dated December 27, 2001, the Appellate Division, Second Department denied the Motion for Interim Suspension and appointed Jerome H. Becker as Special Referee to hear and report his findings on the issues raised. By Report dated July 19, 2000, the Special Referee sustained all charges then pending.

Based upon the review of the following information in mitigation, Respondent prays that the court will reconsider the severity of the sanction imposed for the offenses committed and impose a sanction that is more consistent with the prior precedents held by the court herein.

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CHECKS TO CASH

In several instances, Respondent has been charged with writing checks to cash on his escrow account. Respondent respectfully submits that it is clear from the charges brought against Respondent, Respondent did not have a true understanding as to the proper use of an escrow account. Having opened an IOLA account in or about June 1994, Respondent did not have any formal training regarding its use. In fact, in his initial deposition before the Petitioner, held on July 15, 1997, Respondent testified at page 27, line 17:

> Q: Was there any particular reason why you wrote this check to cash?
>
> A: I had a misunderstanding of the way it was supposed to be done. My understanding was as long as the face of the check clearly indicated what it's for, that it's O.K. to write it payable to cash.

Page 28, Line 3, Respondent further asserts:

> Q: . . . . did you know when you wrote this check, at the time, that you're not supposed to write a check to cash for an IOLA account?
>
> A: No, I did not.
>
> Q: And should I infer from your answer that at some point you did learn that you're not supposed to do that?

A: After speaking with you ma'am, yes.

Q: Oh, O.K.

A: I mean, even up 'til as recently as two months ago, I honestly did not know.

No evidence was presented by Petitioner to contradict this testimony. Nonetheless, the Judicial Hearing Officer (hereinafter referred to as "J.H.O."), did not give any credence to Respondent's testimony confirming that he was not knowledgeable on the proper procedure for writing checks from his IOLA account.

While it is a general precept that ignorance of the law is no excuse for violating it, in mitigation, Respondent respectfully requests that this Honorable Court consider the Respondent's lack of knowledge regarding the true operation of an escrow account, the fact that no one was harmed by Respondent writing several checks to "cash" as set forth in Charges 2, 19, 32, 34, 37, 40 and 50. Respondent also fully cooperated with the Petitioner's investigation which began more than five (5) years ago, there has been no finding of venality by the J.H.O. hearing this matter and no client complained of the Respondent. It is also requested that the Court herein temper the imposition of its sanction for the violations referenced herein.

CHARGE 4 & 7

Charge 4, which was sustained against Respondent, avers that Respondent "engaged in overreaching by entering into an unsecured, undocumented, interest free loan agreement

with a client and failed to repay the loan promptly upon request. In requesting that the Court herein reconsider the level of the sanction imposed for this violation, Respondent respectfully requests that the court take notice of the fact that as testified to at the hearing and during the various depositions which took place in 1997 and 1998, the client, Mr. Brown was not a lay person, but a professional banker, skilled at making his own assessments in extending loans, particularly as a loan officer for a reputable savings bank. In this instance, a loan was extended to the Respondent and the Respondent was given considerable latitude in the repayment of said loan. There has been no evidence presented by the Petitioner at trial to establish otherwise. In fact, Mr. Brown submitted an Affidavit in Support of Respondent's Opposition papers requesting that Petitioner's Motion for interim Suspension be denied. A copy of said Affidavit wherein Mr. Brown acknowledges "receipt of payment as per our agreement" is annexed hereto and included herein as Exhibit "A". Thus, it is respectfully submitted that Charge 4 & 7 should not be sustained, or alternatively, the sanction imposed for said violation be tempered, particularly in light of Mr. Brown's Affidavit of support noted herein.

CHARGE 8

Respondent has been charged with disbursing a check when he did not have corresponding funds on deposit in the account to cover the check. In Reconsideration of the severity of the sanction imposed therein, Respondent respectfully requests that the court notes that the check was presented to Mr. Brown with the understanding that he would not deposit same until oral or written confirmation was given that the

corresponding funds were on deposit. The uncontroverted testimony at trial deduced that the check was deposited by a third party who was not privy to the agreement. In hindsight, Respondent realizes that this was an exercise of bad business judgment, but it was in no manner designed to mislead or misrepresent to the client, Mr. Brown, as to the status of the check tendered.

CHARGE 9

Respondent has been charged with failing to produce a check register beginning from 1994. Respondent respectfully submits that he presented Petitioner with all documents that he was able to locate for the relevant period in question, including the files for Mr. Brown, which included a copy of all checks issued from the IOLA account relating thereto. Respondent notes that he had been required to relocate his practice twice since 1994 which compounded his ability to locate the original ledger.

SHIRLEY GRAY MATTER

CHARGE 10

Charge 10, which was sustained by the court herein avers that Respondent disbursed a check to a vendor on behalf of his client, Shirley Gray without having the corresponding funds on deposit, thereby violating DR 9-1-2(a). Respondent respectfully submits that the J.H.O. hearing this matter gave little or no credence to Respondent's testimony wherein he testified that the check was forwarded to Attorney Bill McMullan's office with the understanding that the funds to

cover said check would be deposited simultaneously with the issuance and delivery of the check. During this transaction which occurred in 1996, it was implicitly indicated to Mr. McMullan's office that the check should not be deposited until they received a telephone call confirming that the funds had been deposited. In fact, Mr. McMullan submitted an Affirmation which was annexed as Exhibit "A" in Respondent's Affidavit in Opposition to Petitioner's Motion for Interim Suspension. A copy of said document is annexed hereto as Exhibit "B". In said Affirmation, Mr. McMullan confirms that he received a call from Respondent on the date said check was presented to the bank, which is the same day it was received, wherein Respondent indicated that he had been tied upon in court and would be depositing the funds to cover the check later that same day. Mr. McMullan further indicated that "Mr. Maloney has been always forthright regarding the disposition of any funds tendered to my office on behalf of his client and I do not believe Mr. Maloney intended to defraud my office in any way by issuing an invalid check." The funds were indeed deposited on the same day, but not before a member of Mr. McMullan's staff presented said check for payment to Mr. Maloney's bank. In mitigation, it is respectfully requested that the court take judicial notice that no one was harmed by this transaction. Moreover, during said period, Respondent was involved in a protracted criminal and federal court matter that impeded his ability to make a more timely deposit. Ms. Shirley Gray, the client on whose behalf the payment was tendered, has submitted an Affidavit in Support of Respondent which was previously submitted to the court herein. Based upon afore-referenced factors, it is respectfully requested that the severity of the sanction imposed by the court herein be tempered.

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CHARGE 12

Respondent respectfully submits that Charge 12, which avers that Respondent commingled his legal fees with that of his client should be dismissed in its entirety, or alternatively, remanded for findings consistent with the proof presented. More specifically, there was no evidentiary proof submitted by Petitioner to establish that the cash received by Respondent, Shirley Gray, on June 28, 1996, for which she was credited with payment for legal fees, were the same funds deposited into Respondent's IOLA account to pay a bill for Ms. Gray. In fact, it would be inconsistent with the Respondent's business interests for the Respondent to credit Mr. Gray with a payment for a legal fee that same day and to then utilize those funds to pay a bill on her behalf without showing a corresponding charge for same in the invoice for services rendered as set forth in Exhibit 19.

VARGAS MATTER

Respondent respectfully submits that the J.H.O. committed prejudicial error by not granting a continuance of the hearing to allow Mrs. Vargas to testify on Respondent's behalf. Respondent's counsel avers that in the event that Mrs. Vargas were able to testify, she would have been able to confirm that she had granted Respondent permission to withdraw the funds he was holding in escrow on her behalf after consulting with her husband, who was appearing pro se during said period. Said testimony would have effectively refuted Charges 13, 16 and 17, which were sustained by the court.

CHARGE 13

With respect to Charge 13, wherein Petitioner alleges, inter alia, that Respondent misappropriated client funds by disbursing check #182 to "cash" for $1,500.00 prior to the corresponding deposit for $3,500.00 clearing the account, Respondent respectfully submits that as testified to during the deposition of July 15, 1997, that the acts of disbursing the check prior to the corresponding deposit clearing was not intentional, but was done only after being advised by the banking personnel at Citibank that the corresponding deposit had cleared the account. Moreover, it is common knowledge that most banks will not cash a check without the corresponding funds being on deposit. In this instance, the banking institution not only advised Respondent that the corresponding deposit had cleared the bank, but cashed the check presented to it by Respondent simultaneously thereto. No credence was given to Respondent's testimony in regards to this matter by the J.H.O..

CHARGE 24

With regards to Charge 24, wherein, Respondent is charged with failing to disburse $100.00 on behalf of Mrs. Vargas, it should be noted that Respondent considered those funds personal to him which had been earned in servicing Mrs. Vargas and she has indeed, been credited for said payment. It was also Respondent's understanding that pursuant to the Disciplinary Rules, he may keep a nominal amount of personal funds in the IOLA account to cover any incidental expenses. Thus, he allowed the $100.00 to remain in the account until the account was eventually closed.

Respondent testified at trial (see Trial Transcript, page 190) that he was not holding any funds on behalf of anyone at all. In fact, the Citibank IOLA account had been closed, as well as the Chase Trust Account. Prior written notice was given to Respondent's prior counsel, Brennan, Fabriani & Novenstern, of Respondent's intention to close the account. Written confirmation was also forwarded to counsel prior to the hearing to confirm that said accounts had been closed and all funds relating to any clients had been disbursed. Based upon information and belief, said letters were not submitted at the trial to Respondent's detriment. Moreover, for reasons discussed below, the principles of justice and equity dictate that Charge 24 should not be sustained against Respondent, for failing to disburse $100.00 to a client, when that client owes him in excess of $21,000.00.

CHARGE 25

As attested to in his correspondence to Petitioner and depositions conducted, Respondent respectfully submits that the only funds on deposit during the period that is the subject of the Charges set forth in Charge 25, was his fee which was recently earned, but not yet disbursed, in connection with servicing the Hooper Matter. There were no other funds on deposit for any client. Thus, Respondent respectfully submits that there was no "commingling" on the date check #139 for $350.00 was tendered on behalf of the Hooper Matter.

Based upon the foregoing, it is respectfully requested that Charge 25 be dismissed, alternatively, the imposition of the sanction imposed for said violation be tempered.

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ADDITIONAL MITIGATING FACTORS IN VARGAS

It should be noted that Petitioner exercised considerable care, skill and talent in portraying Respondent as someone who had taken advantage of Mrs. Vargas by either converting or misappropriating funds being held by Respondent on her behalf. Said portrayal, which is the subject of Charges 13, 16, 17, 19 & 24 which were sustained by the court, is far from the truth and fails to give a true account of the facts and circumstances. To place the Vargas matter in its proper context, judicial notice should be taken of the fact that Respondent has provided legal services to Mrs. Vargas in excess of $26,000.00. Respondent is still due and owed more than $21,000.00 by Mrs. Vargas despite Mrs. Vargas having received a check in the amount of $22,500 for equitable distribution in connection with the matrimonial action handled by Respondent on her behalf. Moreover, Respondent has obtained a fee arbitration award from the Westchester County Fee Arbitration Committee in the amount of $16,355.61 and a Judgment from the Hon. Anthony Scarpino "Setting and Fixing a Lien" in the amount of $16,355.61 against any of the proceeds derived from the action. A judgment in the amount of $5,000.00 against Mr. Vargas was awarded to Respondent by the Justice Scarpino. Mr. Vargas has yet to satisfy said judgment which was issued in 1996, despite due demand.

Respondent respectfully requests that the court consider that Respondent undertook the task of representing a client who initially did to have the funds to retain counsel, but availed herself of the services of the Respondent with the promise to compensate him upon the eventual distribution

of her equitable share in the marital estate. Upon receiving said services, without objection, as well as the proceeds from said efforts, Mrs. Vargas refused to tender payment to Respondent. Yet Respondent is now charged with misappropriating and converting funds being held on her behalf. It is respectfully submitted that said result is inequitable and unjust.

In mitigation, Respondent respectfully requests that the court take into consideration the unsolicited testimony of Amelia Del Vecchio, Law Assistant to Justice Louis Barone, the judge hearing the Vargas matter during the period in question. On page 99, line 6 of the Trial Transcript, Ms. Del Vecchio testifies:

Mr. Maloney, I have known him on other cases, he is a fine gentleman. When we conferenced other cases and we said this was what was going to be done, that was the understanding and I took his word because of knowing he is a good man, then he is going to follow through."

Justice Barone, the Presiding Justice relating to the Vargas matter has also submitted an Affirmation on Respondent's behalf attesting to Respondent's good character. A copy of said Affirmation, which was previously submitted, is annexed hereto as Exhibit "C".

Based upon the foregoing, it is respectfully requested that the matter be remanded for further findings, or alternatively the imposition of the sanction for the charges sustained referenced above, be tempered.

Appendix

CASH DISBURSEMENTS

CHARGES 26, 27, 28, 30, 31, 32 & 34

Respondent respectfully submits that there is no clearer demonstration that Respondent was not aware as to how to properly manage and handle an attorney IOLA, than as evidenced by the circumstances giving rise the charges set forth in Charges 26, 27, 28, 29, 30, 31, 32 & 34. More specifically, Respondent disbursed several checks to several entities to cover expenses relating to the servicing of several clients. With the exception of the checks referenced in Charge 31 and the residual charges relating thereto, Respondent disbursed the checks which are the subject of the aforesaid charges, against fees which he had earned that were being held in escrow, but not yet disbursed. Respondent was not aware at the time of these disbursements that said actions were prohibited. While the J.H.O. hearing this matter acknowledged the testimony of Respondent regarding this practice, said testimony was not given any credence.

Respondent respectfully submits that given the Respondent's limited understanding of the proper utilization of the escrow account by the Respondent during the period of the infractions which are the subject of the aforesaid charges, lack of harm to any client, the fact that no one complained of the Respondent, Respondent's full cooperation with the Petitioner's investigation which lasted more than four (4) years, that the court's sanction imposed for these violations be tempered.

Appendix

CHARGES 36, 37, 38, 45, 46, 48, 49, 51, 52, 53, 54, 56, 58 & 59

Respondent respectfully submits that he acted improperly in disbursing the funds that are the subject of Charges 36, 37, 38, 45, 46, 48, 49, 51, 52, 53, 54, 56, 58 & 59, but asks the court to temper its imposition of sanctions based upon the fact that no client was prejudiced by his actions, no one complained of his actions, any funds improperly removed were immediately reinstated to the account, his full cooperation and candor with the Petitioner's investigation which lasted nearly five (5) years, lack of venality as confirmed by the J.H.O. hearing the matter and the unlikelihood that any such violations would occur in the future. Moreover, given Respondent's 4 year record of public service as an employee of the court system, having clerked for the Hon. Harvey Sklaver, who testified on his behalf, his service as a staff member for the First Departmental Disciplinary Committee, wherein his training and scope of employment was limited to non-escrow related matters and his exemplary service to the community and the bar, which are set forth at length in the original moving papers present to the court herein, it is clear that Respondent has been a substantive asset to the bar and the community.

CHARGE 41

Upon a review of all the relevant records submitted by Petitioner as exhibits at the trial, it has become apparent to Respondent that the monies remaining in the Citibank IOLA account that is the subject of Charge 41, were not that of Ms. Lilly Brown, as alleged and admitted to in the charge,

but were personal funds that Respondent had earned, but not yet disbursed, in connection with the Vargas matter. Thus, Respondent respectfully submits that the funds disbursed in check # 197 in the amount of $30.00, belonged to Respondent, and not Ms. Brown and as such, said Charge should be dismissed or remanded for further findings consistent with the proofs submitted.

CHARGE 42

Respondent respectfully submits that $600.00 deposited into the Citibank IOLA account for the benefit of his sister's closing was a mere accommodation to assist her with the closing, and that he was not aware that said act constituted "commingling", particularly since no other client funds were on deposit when said deposit was made. Based upon the foregoing, it is respectfully requested that Charge 42 be dismissed, or alternatively, the severity of the court's imposition of sanctions for this violation be tempered.

CHARGES 44, 53 & 62

In Charges 44, 53 & 62, Respondent is charged with disbursing, respectively, $3.00, $68.43 and $.90 more than what he had on deposit for the clients who received the benefit of the payments. Respondent respectfully submits that said overpayments were mistakes and de minimis in nature. In fact, the only person harmed by these overpayments was Respondent, whose personal funds which were left in the account to cover any incidental expenses relating to the operation of the account, were depleted without restitution by the respective clients.

Based upon the foregoing, coupled with Respondent's full cooperation with the Petitioner's investigation which lasted more than four (4) years, it is respectfully requested that the court temper the imposition of sanctions against Respondent for the aforesaid infractions.

CHARGE 57

In charge 57 Respondent is charged with failing to disburse $597.00 for the benefit of the Breuss-Burgess. In his answer, Respondent avers that his client, Geiunevere Jones-Wood, actually owed him legal fees in excess of $597.00 and indicated at trial that at that time he was owed additional legal fees by Respondent, which was credited to her account resulting from a prior disbursement that is the subject of another charge. In fact, $103.00 is stilled owed to Respondent by Mrs. Wood for legal fees. There was no evidence presented at trial to contradict this testimony. Nonetheless, said charge was sustained by the J.H.O. Based upon the foregoing, it is respectfully requested that this charge be dismissed or alternatively, remanded for further findings. In the event that this Honorable Court is inclined to affirm the charge, it is respectfully requested that the court temper its imposition of the sanction imposed for this violation and note that Mrs. Jones-Wood has submitted a character affidavit on Respondent's behalf and has as recently as 6 months ago, utilized Respondent's services to conduct another closing wherein she was the seller.

CHARGE 58 & 59

Charge 58 & 59 which were sustained by the court, avers that Respondent withdrew funds for legal fees for which he was holding in escrow pursuant to a retainer agreement drafted by his office, prior to billing the client. Respondent respectfully requests that the court tempers it's sanctions for this infraction based upon several factors, including the fact that there was no ethical obligation by Respondent to place said funds in escrow, Respondent's uncontroverted testimony that the retainer agreement was fatally flawed, no harm was done to the client, and Respondent fully cooperated with the Petitioner's investigation regarding this matter. In fact the client has submitted an Affidavit on Respondent's behalf, a copy of which is annexed hereto as Exhibit "D".

Upon a review of the Respondent's financial records, it should be noted that no funds were misappropriated in connection with the Oliver matter that was never earned. Moreover, Oliver currently has an outstanding balance due and owing to the Respondent in excess of $10,000.00 for services rendered.

CHARGE 63

Charge 63, has been sustained against Respondent in part for conduct that adversely reflects on his fitness as a lawyer resulting from Respondent's alleged failure to disburse $12.67 on behalf of Mrs. Batson. Respondent respectfully submits that said amount was disbursed for the benefit of Ms. Batson prior to the hearing date in partial payment for the fees due and owing to Respondent. No evidence was

offered at trial to contradict this testimony, as well as documentation presented to trial counsel. Thus, it is respectfully requested that the J.H.O. committed prejudicial error in sustaining said charge which the court herein, hereafter relied upon in sustaining said charge.

CHARGE 64

Respondent respectfully submits that Charge 64, which emanates from Respondent's failure to deposit $475.00 partial retainer for a real estate transaction into his trust account regarding Mrs. Batson is narrowly drawn in that the factual allegations are true, but did not necessarily result in misappropriation of any client funds. The reality is more than four hours worth of services were rendered to Mrs. Batson in drafting a Sales Contact as well as conferring with several parties involved in the sale, prior to her presenting the partial retainer. In effect, the fee had been earned prior to it being presented. Moreover, there was no obligation to place said funds in escrow and there was no evidence presented to trial to controvert said testimony. Thus, it is respectfully requested that this charge be dismissed, alternatively, remanded for further findings consistent with the facts.

CHARGE 65, 66 & 67

Charges 65,66 & 67, again, are another clear demonstration of Respondent's misunderstanding of the proper use of an escrow account. In Charges 65 and 66 Respondent deposited earned fees, respectively, in the amount of $1,000.00, relating to the Miller Closing and $350.00, relating to the Thomas matrimonial action into his trust

account. The only funds on deposit during the time of the said deposit was $14.18 representing a portion of previously earned fee that was not disbursed, but kept in the account to cover any incidental expenses. Respondent subsequently disbursed several checks, as set forth in Charge 67 to cover the cost of handling several miscellaneous matters based upon the premise that all monies contained in the account were fees earned. There was neither any venality present, nor was any client harmed as a result of said acts. The account was closed shortly thereafter. Again while ignorance of the law is no excuse, the Respondent respectfully request that this court give credence to Respondent's testimony that he did not know said practice was improper and request that it temper its imposition of sanction for said infraction accordingly.

CHARGE 72

Petitioner contends that Respondent failed to disburse $25.00 relating to the Smith Closing despite Respondent presenting Petitioner with entire closing file that documents that the seller's were required to refund $225.00 from said closing. It should be noted that subsequent to the closing the Respondent realized that there was an overpayment to seller, thus he reduced the disbursement of his fee from $750.00 to $500.00 so that the account would not be overdrawn. He allowed the $25.00 fee, which he had earned, to remain in the account to cover any incidental expenses or errors resulting from any faulty accounting. He eventually received a refund for the $225.00 overpayment. It is respectfully submitted that it appears contrary to the principles of justice and equity to now charge him with acting improperly under

the circumstances. Given these factors, it is respectfully requested that the court temper its imposition of sanction relating to the matter herein.

IMPOSITION OF SANCTIONS

When determining the appropriate sanction to be imposed against a Respondent for escrow account violations, historically, there are a number of different factors that the court examines, including, but not limited to: venality, cooperation with the Petitioner's investigation, contrition, remorse, harm to client, seriousness of violation, prior history, likelihood of infraction recurring, character letters, circumstances impacting upon the Respondent's actions. The precedent in this Judicial Department indicate that the court has a history, as well as the discretion to impose sanctions ranging from public censure to disbarment in the most serious cases (See *In the Matter of Robert G. Whiteman*, 651 N.Y.S.2d 555, 226 A.D.2d 20 (1996) holding that Respondent attorneys, who converted funds entrusted to them on behalf of a client, failed to maintain required records for their attorney IOLA account and failed to properly file retainer closing statements with the Office of Court Administration, are guilty of professional misconduct, and, in consideration of the evidence offered in mitigation, they are censured; *In the Matter of Kenneth Popper*, 709 N.Y.S.2d 579, 274 A.D.2d 28 (2000), holding respondent's mishandling of escrow account warranted censure, in light of attorney's candor and cooperation, his expressed remorse, total lack of venality of his mistake, his immediate action in covering shortfall in his escrow account, absence of any prior disciplinary history, unlikelihood that such conduct would

ever be repeated and substantial other evidence offered in mitigation. *In the Matter of Robert J. Ponzini, and Robert W. Spencer, (citation to be provided)* holding that disbarment was "excessive discipline" because of the absence of any monetary loss to clients for letting escrow accounts fall to below zero, and because both attorneys reported the thefts of a former partner. The sanction imposed was a one year suspension; *In the Matter of Wynne*, 260 A.D.2d 23, holding respondent attorney who failed to properly maintain his escrow account, improperly converted funds entrusted to him as a fiduciary, is guilty of professional misconduct. Upon consideration of factors in mitigation, including Respondent's remorse and lack of venality, his previously unblemished record, his cooperation with the Grievance Committee's investigation, and character letters submitted on his behalf, respondent was suspended for a period of two years; *In the Matter of William Geier*, 709 N.Y.S.2d 195, 274 A.D.2d 103 (2000), holding attorney who converted escrow funds to the detriment of his client was disbarred.

In this particular instance, despite the numerous charges brought against the Respondent, there has been no finding of venality, Respondent has fully cooperated with the Petitioner's investigation that has lasted more than four (4) years, Respondent has expressed considerable remorse and contrition for his actions, no client has complained of Respondent, no client has been harmed or prejudiced in any manner, Respondent's clearly had a lack of understanding on the proper use of an escrow account, Respondent's lack of experience in handling escrow funds at the time of most of the infractions and the numerous Affirmations and Character letters from distinguished members of the bar,

community and various clients whose funds were the subject of the instant action. Respondent has also rendered exceptional service to the bar and community, as documented in his previous submissions. Said activities include, but are not limited to, serving as delegate to the Judicial Screening Panel for the Metropolitan Black Bar Association ("MBBA") and the Association of the Bar of the City of New York, (1990-1991 & 1998), President of the MBBA (1993-1994), Delegate to the Network of Bar Leaders (1993-1994), Vice Chairman of the Board of Directors of the MBBA (1994-1996), Vice Chairman of the Advisory Board of Directors for the New York Urban League (1994-1996), Chairman of the Board of the Advisory Board of the New York Urban League (1996-1998), member of the Board of Trustees for the New York County Lawyers Association (1997-2000). Respondent has also served as a volunteer and mentor to several organizations, including, but not limited to "The Door" a non-profit organization providing services and housing to drug addicts and prostitutes, Practicing Attorneys and Law Students (P.A.L.S.), Harlem Dowling Westside Center for Children, Association of the Bar of the City of New York's Haitian Asylum Project. He has been also an active contributing member to several standing committees in the Association of the Bar (Council on International Affairs, Women in the Courts, Federal Task Force on Race and Gender in the courts, minority job recruitment conference co-founder, Lawyers In Transition, etc.) New York County Lawyers Association, as well as the MBBA. Given his short tenure as a member of the bar, it is clear that Respondent's commitment and contributions to the bar and the community exceeds a majority of his peers.

Appendix

In mitigation, Respondent submits several supplemental letters and Affirmations of Support in connection with the instant application, including a letter from his Pastors, Pastors Clinton and Sarah Utterbach, a letter from Diane Pollard, Esq., an attorney on Staff with the New York City Police Department, as well as an Affirmation from Arlene Gordon Oliver, Esq., a partner in a prominent Westchester County firm, as well as the current President of the Westchester County Black Bar Association. Said exhibits are annexed hereto respectively as Exhibits "E, F, & G," respectively.

It is the Respondent's hope that with the additional explanation of the circumstances that gave rise to the charges sustained, and a more careful review of the facts and proofs offered at trial, that the court will see that the matter is more analogous to the cases cited above wherein the less severe sanction of disbarment was not granted, but the suspension ranged anywhere from public censure to a two year suspension.

WHEREFORE, Respondent prays that the court temper its imposition of the strong sanction of disbarment for the infractions committed, plus other, and further relief as this Honorable Court may deem appropriate and just.

Dated: White Plains, New York
May 16, 2001

s/ Andrew G. Maloney
ANDREW G. MALONEY

AFFIDAVIT OF GUILLERMO BROWN IN OPPOSITION TO MOTION TO SUSPEND ON AN INTERIM BASIS

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

AFFIDAVIT OF GUILLERMO BROWN IN OPPOSITION TO MOTION TO SUSPEND ON AN INTERIM BASIS

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

I, GUILLERMO BROWN, being duly sworn, hereby state under the penalties of perjury:

1. It has been brought to my attention that there has been a complaint brought against Mr. Andrew G. Maloney

emanating, in part, from a loan transaction between Mr. Maloney and myself and I hereby make this Affidavit in Opposition to said Motion and in support of Mr. Maloney being allowed to continue to practice law.

2. It should be noted that with respect to the loan transaction between Mr. Maloney and myself, I agreed to same and was aware that he would be drawing against said funds held in escrow on my behalf. Said funds have been repaid in full as per our agreement.

3. I have no complaints regarding the manner in which Mr. Maloney provided legal services to me and he has in fact provided legal counseling to me, as well as several of my clients on a pro bono basis over the past several years. Moreover, I would not hesitate to refer clients to him which I have attempted to do on several occasions since.

4. It is my firm opinion that Mr. Maloney has the necessary qualities to continue to represent clients in a fair and objective manner and has demonstrated an unparalelled commitment regarding servicing the needs of his clients.

Dated: New York, New York
November 29, 1999

s/ Guillermo Brown
GUILLERMO BROWN

AFFIRMATION OF WILLIAM MCMULLAN

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

AFFIRMATION OF WILLIAM MCMULLAN

I, WILLIAM MCMULLAN, an attorney duly licensed to practice law in the State of New York hereby affirm the following under the penalties of perjury:

1. I am one of the principal attorneys in the law firm of Danow, McMullan & Panoff with offices located at 271 Madison Avenue, New York, New York 10016.

2. In or about the latter part of June 1996, I received a check from Mr. Maloney's office in the amount of One Thousand, Five Hundred ($1,500.00) Dollars drawn upon his escrow account. In light of the fact that the check did not have any written instructions regarding same, upon receipt of said check, the check was presented for payment.

3. On the date that said check was presented to Mr. Maloney's bank, I received a call from Mr. Maloney who advised me that he had been tied up in court and did not have the opportunity to make the deposit to cover the check, but would be doing so later on that date. Mr. Maloney advised me that in the event that the check bounces that it should be redeposited.

4. The check was indeed returned for insufficient funds and redeposited wherein it cleared several days later.

5. Based upon information and belief, Mr. Maloney also compensated my office for any return check fees incurred by my office.

6. It has been brought to my attention that there has been a complaint brought against Mr. Andrew G. Maloney as a result of the afore-referenced transaction.

7. Based upon my interaction with Mr. Maloney during the course of the aforesaid transaction and several other transactions that occurred during the same time period in issue, Mr. Maloney has been always candid and forthright regarding the disposition of any funds tendered to my office on behalf of his client and I do not believe Mr. Maloney intended to defraud my office in any way be issuing an invalid check.

Dated: New York, New York
November 29, 1999

s/ William McMullan
WILLIAM MCMULLAN

AFFIRMATION OF HON. LOUIS A. BARONE

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

AFFIRMATION OF HON. LOUIS A. BARONE

I, LOUIS A. BARONE, a member of the Judiciary of the State of New York, hereby affirm under the penalties of perjury:

1. I am currently employed by the New York State Judiciary as a Justice of the Supreme Court of the State of New York.

2. I am aware of the general nature of the charges pending against Respondent, Andrew G. Maloney and I am hereby submitting this Affirmation on behalf of Mr. Maloney in connection with the above-referenced attorney disciplinary matter.

3. I have known Mr. Maloney for approximately five (5) years as a result of his having appeared before me on numerous occasions in connection with several matrimonial actions where he represented various litigants. I have also had the opportunity to discuss Mr. Maloney's character and reputation with several members of the bar.

4. As a result of the foregoing activities, I am familiar with Mr. Maloney's reputation in the community. His reputation for honesty and integrity is of the highest caliber.

Dated: New York, New York
July 12, 2000

s/ Louis A. Barone
HON. LOUIS A. BARONE

AFFIDAVIT OF EDWARD OLIVER

SUPREME COURT OF THE STATE OF NEW YORK APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

AFFIDAVIT OF EDWARD OLIVER

I, EDWARD OLIVER, being duly sworn, hereby state the following under the penalties of perjury:

1. I am a retired Operating Engineer for the Town of Islip, New York, where I was employed for more than twenty five (25) years prior to retiring in 1989.

2. Over the past several years, I have been entrusted with caring for my spouse who suffered a stroke as a result of several work related incidents. Upon being dissatisfied with my current attorney handling her disability claim, I inquired amongst several of my colleagues for a reputable attorney. As a result of said search, I was referred to Andrew G. Maloney, Esq.

3. Upon meeting with Mr. Maloney, in August 1997, Mr. Maloney agreed to handle my case and apprised me as to what steps were involved in handling the case. He requested an initial retainer in the amount of Ten Thousand ($10,000.00) Dollars which I tendered during said period.

4. During said period, Mr. Maloney provided me with a retainer agreement which I executed and submitted to his office. Upon meeting with him he explained the billing procedures to me. In response to his explanations, I indicated to him that I was not concerned with the billing procedures and that he should do whatever he needed to do to handle the case, including, advancing any monies to cover fees, costs and expenses. I indicated to him that my primary concern was to remedy the denial of disability benefits requested by my wife for her job related injuries.

5. Mr. Maloney has done a tremendous job in servicing me as a client for which I am grateful. Moreover, he has lived up to his reputation in the community for being an attorney who trustworthy and full of character. As a result, I would not hesitate to refer any of my friends and family members to him.

6. It should be noted that I am not available to testify on Mr. Maloney's behalf as a result of having to care for my wife who has recently suffered another stroke. But anyone needing any additional information about Mr. Maloney should feel free to contact by telephone.

Dated: March ___, 2000

s/ Edward Oliver
EDWARD OLIVER

LETTER FOR REQUEST FOR RECONSIDERATION OF SANCTION IMPOSED DATED MAY 15, 2001

Clinton H. Utterbach
Sarah W. Utterbach
Pastors

REDEEMING LOVE
CHRISTIAN CENTER

May 15, 2001

Presiding Justice Lawrence J. Bracken
Supreme Court of the State of New York
Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201

Re: In the Matter of Andrew G. Maloney — Request for Reconsideration of Sanction Imposed

Dear Justice Bracken:

It is with great joy that we present to you this letter attesting to the character of Mr. Andrew G. Maloney, a member of our congregation for more than ten (10) years. Mr. Maloney, throughout his years in attendance at our church, has been a diligent and steadfast member who has demonstrated, consistently through his lifestyle and behavior, that he knows and understands the principles and truths set forth in the Holy Bible. Mr. Maloney is highly regarded by other members of the congregation and has often been called upon to render legal advice to several members of the congregation, which he has provided at little or no charge. He is regarded as

someone that may be trusted and honest in rendering legal services. He has volunteered on numerous occasions in assisting in the various aspects of the ministry, including but not limited to, serving as a chaperone on a trip for our Youth Ministry to Baltimore, Maryland. We have also come to know Mr. Maloney's wife and children, respectively, Dr. Romelle J. Maloney, Megan and Andrew Maloney, Jr. Both of Mr. Maloney's children attended Love Christian Academy, a school which was known for its high standards for academic excellence, over a 2 to 4 year period prior to its closing. Their attendance at the school also gave us an opportunity to further interact with Mr. Maloney. Judging from the reverence to the word of God that has been instilled into his children, it is clear that Mr. Maloney, as the head of his household, is someone that keeps God's principles close to his heart.

It is our understanding that Mr. Maloney's license to practice law has been effectively revoked as a result of several improprieties relating to his management of his attorney escrow account dating as far back as 1994. It is also our understanding that no one has been harmed by any of these actions and that there has been no finding of marked dishonesty. Moreover, we further understand that there have been no complaints of any wrongdoing against Mr. Maloney. Given what we know of Mr. Maloney's character and reverence of the Lord, we are confident that any lapse in judgment by Mr. Maloney in committing these acts were not normal in nature and it is highly unlikely to occur in the future.

To place our opinion of Mr. Maloney in its proper context, it should be noted that there are over two thousand (2,000) members in our congregation, and we have a staff of more

than three hundred fifty (350) people, many of whom are volunteers. We also have a radio ministry that is broadcast on thirty-four (34) stations around the world. We frequently fellowship with and counsel many ministers that are world renown. We have been recipients of many awards for our teaching and music ministry, which are also heard around the world. Thus, we are often called upon to by many to provide counseling during their critical hour of need, but do so only under the compulsion and direction of the Holy Spirit.

There is no doubt in our minds that Mr. Maloney is a Christian according to the Bible's standards. He has asked forgiveness of God, his pastors and his family for any wrongdoing, intentional or otherwise, which we believe has been granted by all of us.

A personal observation is that Mr. Maloney single handedly prepares and accompanies his children to church even when Dr. Maloney, his wife and a physician, is on call. This has taken place for as long as the children have been born. As pastors of a large integrated congregation, we are not often aware of this kind of commitment to God, family and church. We have few fathers at home or even supporting their families; please don't allow Mr. Maloney to become another statistic in the vicious cycle we so often see.

It is our hope that you will reconsider the severity of the sanction imposed upon Mr. Maloney and provide him with the opportunity to practice law again. Once provided with the opportunity to resume the practice of law, we are confident that you will find Mr. Maloney to be a faithful and diligent servant, committed to the ways of the Lord in rendering services to the public.

Wishing you God's peace and blessings in your deliberation, we remain,

His joint heirs,

s/ Clinton and Sarah Utterbach
Clinton and Sarah Utterbach
Pastors

LETTER FOR REQUEST FOR RECONSIDERATION OF SANCTION IMPOSED DATED MAY 5, 2001

DIANE POLLARD, ESQ.
67 Wall Street, Suite 2211
New York, N.Y. 10005
(212) 804-5723

May 5, 2001

Presiding Justice Lawrence J. Bracken
Supreme Court of the State of New York
Appellate Division, Second Department
45 Monroe Place
Brooklyn, NY 11201

Re: In the Matter of Andrew G. Maloney — Request for Reconsideration of Sanction Imposed

Dear Justice Bracken:

I take this opportunity to comment on the character of Andrew G. Maloney in support of Mr. Maloney's Request for Reconsideration of the Sanctions relating to your recently published decision.

I have been a New York City Police Detective for nearly twenty (20) years, fifteen of which, have been within the legal field. I was assigned as a Prosecuting Attorney in the Department's Advocate's Office and I currently serve as a Deputy Managing Attorney within the Legal Bureau. Throughout my twenty (20) years with the NYPD, I have gained a vast amount of experience with law enforcement

officers and civilians. As a result of my extensive experience within law enforcement, I believe I have become an excellent judge of character.

I have known Mr. Maloney for approximately five (5) years through my involvement in several bar associations, court related, as well as social functions. I have observed him to be a conscientious, caring, talented and responsible young man who has the utmost respect for his family and people in general. I have always admired his family values and the manner in which he and his wife are raising their two young children. I am 100% confident in Mr. Maloney's abilities and professionalism as an attorney and I am sure that he will continue to be the steadfast responsible person that has inspired him to work so hard to become an attorney, once provided with the opportunity to continue to practice law.

Based upon my observation, Mr. Maloney has the utmost respect for the legal profession. He is an exceptionally able and committed lawyer who has devoted his professional life to the legal system. Unfortunately, in life, we all make mistakes and errors in judgment. Thus, I view the charges that have been sustained against Mr. Maloney to be aberrational in nature, particularly in light of Mr. Maloney's deeply rooted respect for legality and his obedience to the law, which I consider to be one of his greatest virtues. In fact, many attorneys, both young and old, admire and look up to Mr. Maloney, as he has been a positive influence and inspiration to them. Moreover, through his hard work, leadership and voluntary contributions to several bar and civic organizations, it is clear that Mr. Maloney is someone that many people hold in high esteem.

Appendix

The legal community truly has been blessed to have had the services of someone with the level of commitment to the profession as Mr. Maloney. It will truly be a loss to the profession and to the community to sustain the current sanction of disbarment against Mr. Maloney. Thus, I pray that you will give favorable consideration to Mr. Maloney's request for Reconsideration of Sanctions and truly assess Mr. Maloney's character and fitness to practice law based upon his work, dedication and commitment to the legal community, bar and the community at large.

Again, thank you for your favorable consideration of Mr. Maloney's request for Reconsideration. I remain,

Respectfully yours,

s/ Diane Pollard
Diane Pollard, Esq.

AFFIDAVIT OF ARLENE GORDON OLIVER, ESQ.

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: SECOND DEPARTMENT

In the Matter of ANDREW G. MALONEY, an Attorney and Counselor-at-Law

GRIEVANCE COMMITTEE FOR THE NINTH JUDICIAL DISTRICT,

Petitioner,

-against-

ANDREW G. MALONEY,

Respondent.

(Admitted under the name Andrew Gerald Eardley Maloney)

TO: HON. LAWRENCE J. BRACKEN,
PRESIDING JUSTICE
HON. CORNELIUS J. O'BRIEN
HON. FRED T. SANTUCCI
HON. MYRIAM J. ALTMAN
HON. GABRIEL M. KRAUSMAN

AFFIRMATION OF ARLENE GORDON OLIVER, ESQ.

I, ARLENE GORDON OLIVER, ESQ., an attorney duly admitted to practice law in the State of New York hereby affirms under the penalties of perjury:

1. I am presently employed as a partner with the Law Firm of Rattett & Pasternak LLP. I am also active in several bar associations in Westchester County,

New York, including, but not limited to serving as the current President of the Westchester County Black Bar Association. I hereby submit this Affirmation in support of Mr. Maloney's Motion for Reconsideration of the level of sanction imposed against him.

2. I have known the Respondent, Andrew G. Maloney, Esq., for more than two (2) years as a result of our mutual involvement in a pending bankruptcy and surrogate court proceedings and as a member of various bar associations. During my professional association with Mr. Maloney, in the context of the litigation of the bankruptcy and surrogate court proceeding, it is clear that Mr. Maloney has represented the interests of his client in a competent and professional manner, thereby earning the respect of the court and various attorneys associated with the case. I have also become acquainted with Mr. Maloney as a result of working with Mr. Maloney in planning and organizing several bar association programs. His experience in planning and executing various programs for the bar and community has been a tremendous source of reference in establishing and executing the agenda of the organization that I am currently leading. I have also become acquainted with the various activities which Mr. Maloney has participated in the past which speaks loudly of his character and commitment to the community. Said organizations include, but not limited to, volunteering his services to the New York Urban League wherein he served as Vice-Chairman and Chairman of its Advisory Board over a four year period and was instrumental in raising several hundred thousand

dollars for the organization on an annual basis, as well as his service to the New York County Lawyers Association, wherein he sat on its Board of Directors from 1997-2000, and the Metropolitan Black Bar Association, wherein he served as President from 1993-1994.

3. Based upon the foregoing, I have had the opportunity to assess Mr. Maloney's skills and talent in the courtroom, as well as his commitment to the bar. I have also had the opportunity to assess Mr. Maloney's veracity and character in the community and I can state unequivocally that his reputation for honesty and integrity is held in the highest regards in the legal, as well as the community at large.

4. Indeed, many of my colleagues in the bar share in my opinion that Mr. Maloney's disbarment is truly a loss to the legal community and community at large from which he will be sorely missed.

5. Based upon the foregoing, it is my hope that the court will reconsider the level of sanction imposed upon Mr. Maloney for the violations committed and will take into consideration his strong level of commitment to service to the bar and the community in assessing his character and fitness to practice law.

Dated: Harrison, New York
May 11, 2000

s/ Arlene Gordon Oliver
ARLENE GORDON OLIVER, ESQ.